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4 C. CHAGAS,

5 Plaintiff,

6 v.

7 KILOLO KIJAKAZI, et al.,

8 Defendants.

9 Case No. [22-cv-08865-AMO](#)

10 **ORDER GRANTING PLAINTIFF'S**  
**MOTION FOR SUMMARY**  
**JUDGMENT, DENYING**  
**DEFENDANT'S CROSS-MOTION**  
**FOR SUMMARY JUDGMENT, AND**  
**REMANDING CASE FOR FURTHER**  
**PROCEEDINGS**

11  
12 Re: Dkt. Nos. 18, 24

13  
14 Plaintiff C. Chagas<sup>1</sup> moves for summary judgment, seeking reversal of the final decision of  
15 the Commissioner of Social Security (“Commissioner”)<sup>2</sup> denying his application for Child’s  
16 Benefits under Title II of the Social Security Act. The Commissioner opposes the motion and  
17 cross-moves for summary judgment affirming the denial. Having considered the parties’ papers  
18 the administrative record, and the relevant legal authority, the Court **GRANTS** Chagas’ motion  
19 for summary judgment, **DENIES** the Commissioner’s cross-motion for summary judgment, and  
20 **REMANDS** this matter for further proceedings.

21 **I. BACKGROUND**

22 **A. Chagas’ Application for Social Security Disability Insurance Benefits**

23 On December 11, 2020, Chagas applied for child’s benefits when his mother began to

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26 <sup>1</sup> The Court partially redacts Chagas’ name to mitigate privacy concerns. *See Heather L. v. Saul*,  
2020 WL 3504468, at \*1 n.1 (N.D. Cal. June 29, 2020) (citing Fed. R. Civ. P. 5.2(c)(2)(B)).

27 <sup>2</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Martin O’Malley, Commissioner of Social  
28 Security, is substituted as defendant in place of Kilolo Kijakazi.

1 draw her retirement benefits. Administrative Record (“AR”) (ECF 17) 223.<sup>3</sup> Chagas was born on  
2 November 21, 1982, and alleges disability prior to November 20, 2004, the day before he turned  
3 22.<sup>4</sup> AR 28-29. On October 4, 2011, at 29 years old, Chagas was found to meet the disability  
4 standard for bipolar disorder as of that date. AR 82-97. He was approved for Supplemental  
5 Security Income benefits, which he continues to receive. *Id.*

6 **B. Medical Evidence**

7 In his application for social security benefits, Chagas submitted medical records detailing  
8 his treatment for bipolar disorder. Chagas reported the onset or awareness of his symptoms at 15  
9 years old, when he suffered from abuse from his father, and was treated for depression. AR 310,  
10 321. Doctors’ notes indicate that in 2003 or 2004, Chagas was prescribed Depakote, a drug used  
11 to treat bipolar disorder. AR 311, 336.<sup>5</sup> Between at least 2005 and 2007, Chagas continued to  
12 receive prescriptions for Depakote. AR 321, 478.

13 In April of 2007, Chagas called his psychiatrist, Dr. Richard Russell, reporting that he was  
14 having “scattering in his thinking, [his] meds were not helping, and that he has been  
15 misdiagnosed.” AR 382. Dr. Russell reported that Chagas had not been in since May 2005 and  
16 had a “past history of settling down with [a] low dose of Depakote and some Restoril for sleep.”  
17 AR 382. Chagas then stopped taking Depakote due to weight gain. AR 312. From 2007 to 2010,  
18 Chagas had multiple visits with Dr. Russell, who prescribed him with Abilify and Lamotrigine for  
19 his bipolar disorder. AR 373-82. Due to medication side effects, treating psychiatrists decreased  
20 his dosage of Abilify in 2010 and 2011. AR 338-39, 343.

21 Dr. Michael Allan Levy treated Chagas in October of 2011 and indicated that Chagas’  
22 mood was “reasonably stable” on Lamictal (Lamotrigine), but he was still “unable to focus” and  
23 unlikely to be able to join the work force. AR 334. In 2018, Chagas sought treatment with Dr.

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<sup>3</sup> Pincites refer to the Bates number on the bottom right of the page.

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27<sup>4</sup> Pursuant to 20 C.F.R. § 404.350, a person is entitled to child’s benefits if he is over 18 years old  
and has a disability that began before turning 22 years old.

28<sup>5</sup> The doctor’s note indicates “[i]n 2004 he was treated with temazepam and Depakote and Abilify  
was first started in May 2007 . . . [.]” AR 336.

1 Emily Stein, reporting that he had stopped taking Lamotrigine when his insurance ended, and that  
2 he “just got insurance again.” AR 325. Chagas had not taken Lamotrigine for several years due to  
3 losing insurance and suffering financial stress. AR 325, 330, 336-37.

4 Medical records from 2010 (AR 343), 2018 (AR 325-26), 2019 (AR 314-15), and 2020  
5 (AR 312) indicate “chronic concerns about focus and memory.” Medical notes indicated that  
6 Chagas reported that Prozac “made me very dangerous to myself and others,” and while taking  
7 Paxil, he was “losing his mind, couldn’t sleep, not eating, forgetful, could not attend school.” AR  
8 315; *see also* AR 500, 502. Chagas suffered from depression, reported thoughts of suicide and  
9 feeling worthless, and periods of thinking “a million times a minute.” AR 325-26. Medical  
10 treatment notes indicate that he was “mildly manic due to stress and was not able to become stable  
11 on medicine. AR 330; *see* AR 325-28 (Dr. Stein reported that Chagas suffers from chronic  
12 depression, generalized anxiety disorder, mania, obsessive-compulsive disorder, post-traumatic  
13 stress disorder, and chronic poor focus); *see also* AR 312, 314, 320-21, 343. Dr. Stein also  
14 reported that Chagas was unable to complete college due to his bipolar disorder, told her that he  
15 “does not feel normal, feels his emotions are extreme,” and was “stressed by his erratic sleep  
16 schedule and anxiety.” AR 498-99, 502.

17 **C. The Administrative Hearing**

18 Chagas appeared with his attorney at a hearing before Administrative Law Judge (ALJ)  
19 Debra Underwood on January 25, 2022. AR 34-62. The ALJ heard testimony from medical  
20 expert Dr. George Bell. AR 44.

21 Dr. Bell testified that Chagas suffers from bipolar disorder. AR 46. He explained that in  
22 2007, at age 24, Chagas was prescribed Depakote and Abilify, which are used, respectively, as a  
23 mood stabilizer in bipolar disorder and therapy for depression and psychotic symptoms. AR 55.  
24 In reviewing records showing that Depakote was prescribed on May 18, 2005, Dr. Bell testified  
25 that “it would indicate to me that at least at that point, . . . at least [his] bipolar symptoms more  
26 likely the manic part—was manifested back in 2005.” AR 58. Dr. Bell testified that Chagas has  
27 mild impairment in social functioning, marked impairment in concentration and attention, and  
28 moderate impairment in adaptation or managing one’s self. AR 49-50. He testified that the

1 medical records show that despite trying various antidepressants, mood stabilizers, and anti-  
2 anxiety medication, Chagas still has active symptoms. AR 52. Dr. Bell testified that even though  
3 there were no records as early as November 20, 2004, it was reasonable to infer the severity of his  
4 condition in 2004, “particularly in light of the claim that he started having difficulty with  
5 depression in his teens.” AR 59. He testified that it was his opinion that Chagas would meet the  
6 definition of bipolar disorder as of November 20, 2004. AR 59.

7 **D. The ALJ’s Decision**

8 After excusing Dr. Bell, the ALJ stated that she would hold a supplemental hearing if she  
9 could not make a fully favorable decision without witness testimony. AR 59-62. On April 5,  
10 2022, the ALJ issued a fully favorable decision on Chagas’ application for child disability  
11 benefits. AR 28-31. Accordingly, Mr. Chagas and his mother never testified. The ALJ made the  
12 following findings of fact and conclusions of law:

- 13 1. Born on November 21, 1982, the claimant had not attained age 22 as of November 19,  
14 2004, the date disability is established (20 CFR 404.102 and 404.350(a)(5)).
- 15 2. The claimant has not engaged in substantial gainful activity since November 19, 2004, the  
16 amended alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).
- 17 3. The claimant has the following severe impairment: bipolar disorder I (20 CFR  
18 404.1520(c)).
- 19 4. The severity of the claimant’s impairment meets the criteria of section 12.04 of 20 CFR  
20 Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d) and 404.1525).

21 AR 29. The ALJ concluded that Chagas’ impairment meets the “paragraph A” criteria of Section  
22 12.04 of 20 CFR 404.1520(d) and 404.1525 because he had “feelings of worthlessness, sleep  
23 disturbance, appetite disturbance, suicidal ideation, sadness/depressed mood, decreased need for  
24 sleep, racing thoughts, and increased energy.” AR. 29. Chagas met the “paragraph C” criteria  
25 because the evidence showed the disorder to be “serious and persistent.” AR 29. The ALJ  
26 reasoned that there was a medically documented history of bipolar disorder for at least two years,  
27 “evidence of medical treatment, mental therapy, psychosocial support, or a highly structured  
28 setting that is ongoing and that diminishes the symptoms and signs of the mental disorder,” and

1 that Chagas had only “a minimal capacity to adapt to changes in [his] environment.” AR 30.

2 The ALJ reached this determination based on Dr. Bell’s testimony confirming Chagas’  
3 mental illness, describing his symptoms, and noting the documented evidence of “pressured  
4 speech, flight of ideas, distractibility, and self-reported psychomotor agitation.” AR. 30. The ALJ  
5 reasoned that medical treatment notes support Dr. Bell’s inference that Chagas was impaired as of  
6 November 2004. AR 30. The ALJ found that Dr. Bell’s inference was consistent with Chagas’  
7 long-standing treating psychiatrist Dr. Michael Levy’s 2011 statement that it was difficult to  
8 stabilize Chagas on his medications for over a decade and that it was unlikely that he would be  
9 able to join the work force. AR 30. The ALJ found Dr. Bell and Dr. Levy’s opinions “consistent  
10 with the mental treatment notes.” AR 30.

#### 11       **E.     The Appeals Council’s Review and Decision**

12       The Appeals Council (AC) reviewed the ALJ’s decision on its own motion and on  
13 October 20, 2022, it reversed the ALJ’s decision. AR 4-10. The AC found that the ALJ  
14 improperly evaluated the medical opinions and prior administrative findings. AR 7. The AC also  
15 found that the ALJ did not evaluate the severity of Chagas’ impairment under the special  
16 technique described in 20 CFR § 404.1520a. AR 5. In re-evaluating the evidence, the AC found  
17 that Chagas had bipolar disorder prior to November 20, 2004, but that the impairment was not  
18 severe as it was not reasonable to infer the severity of the disorder from records dated two years  
19 later. AR 5-8. The AC found that Chagas’ “mental impairments were not so severe as to require  
20 mental health treatment for an extended period” because an April 2007 mental health visit  
21 indicated that Chagas reported having not been seen for treatment in two years. AR 9. Therefore,  
22 the AC found that further testimony from Chagas and his mother would not be useful in assessing  
23 severity. AR 9. The AC concluded that Chagas was not disabled at any time prior to  
24 November 20, 2004, the day he turned 22 years old, and Chagas was not entitled to child’s  
25 insurance benefits. AR 9-10. The AC also noted that Chagas has previously applied for disability  
26 benefits and been found not disabled prior to October 4, 2011. AR 8. The AC found that there  
27 had been no material changes in circumstances since that decision. AR 8. The AC’s decision  
28 became the final decision. AR 1.

1           **F. This Action**

2           On December 14, 2022, Chagas commenced this action against the Commissioner, seeking  
3 judicial review of the denial of his application for Social Security child disability benefits pursuant  
4 to 42 U.S.C. § 405(g). ECF 1. On April 11, 2023, Chagas filed his motion for summary judgment  
5 to reverse the Commissioner’s final decision denying benefits, seeking a remand of this action for  
6 an immediate award of benefits. ECF 18. On June 29, 2023, the Commissioner filed a combined  
7 opposition and cross-motion seeking summary judgment affirming the denial of Chagas’  
8 application. ECF 24. On July 16, 2023, Chagas filed his combined opposition and reply. ECF  
9 28.

10          **II. LEGAL STANDARD**

11          **A. Standard of Review**

12          The Social Security Act authorizes judicial review of final Social Security Agency  
13 decisions based on “the pleadings and transcript of the record.” 42 U.S.C. § 405(g). A federal  
14 court’s review of Social Security determinations is “quite limited.” *Brown-Hunter v. Colvin*, 806  
15 F.3d 487, 492 (9th Cir. 2015). A court may set aside the Commissioner’s denial of benefits if it is  
16 “not supported by substantial evidence or is based on legal error.” *Ferguson v. O’Malley*, 95 F.4th  
17 1194, 1199 (9th Cir. 2024) (citation omitted). “Substantial evidence” means evidence in the  
18 record that “a reasonable mind might accept as adequate to support a conclusion” regarding  
19 disability status. *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (citation omitted). It is more than a  
20 mere scintilla, but less than a preponderance. *Id.*; *see Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir.  
21 1996) (internal citations omitted).

22          In deciding whether substantial evidence supports the AC’s findings, the court “must  
23 consider the evidence as a whole, weighing both the evidence that supports and the evidence that  
24 detracts from the Commissioner’s conclusion.” *Rounds v. Comm’r, Soc. Sec. Admin.*, 807 F.3d  
25 996, 1002 (9th Cir. 2015) (citation omitted); *see Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882  
26 (9th Cir. 2006). If the evidence is susceptible to more than one rational interpretation, the  
27 Commissioner’s findings must be upheld if supported by reasonable inferences drawn from the  
28 record. *Rounds*, 807 F.3d at 1002.

1       A district court may enter a judgment affirming, modifying, or reversing the decision of  
2 the Commissioner, with or without remanding the cause for a rehearing. 42 U.S.C. § 405(g). “If  
3 additional proceedings can remedy defects in the original administrative proceedings, a social  
4 security case should be remanded” for further proceedings. *Lewin v. Schweiker*, 654 F.2d 631,  
5 635 (9th Cir. 1981). If, however, “the record has been developed fully and further administrative  
6 proceedings would serve no useful purpose, the district court should remand for an immediate  
7 award of benefits.” *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).

8           **B. Child Disability Insurance Benefits**

9       To be eligible for disabled child’s insurance benefits, a claimant must “at the time [his]  
10 application was filed,” be “under a disability . . . which began before he attained the age of 22.”  
11 42 U.S.C. § 402(d)(1)(B); *see* 20 C.F.R. § 404.350(a)(5). “The claimant must be disabled  
12 *continuously and without interruption* beginning before [his] twenty-second birthday until the time  
13 [he] applied for child’s disability insurance benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1280 (9th  
14 Cir. 1996) (collecting concurring circuit cases) (emphasis in original).

15           **C. The Five-Step Disability Inquiry**

16       Subject to other provisions not relevant here, a claimant is “disabled” under the Social  
17 Security Act (SSA) if two requirements are met. *See* 42 U.S.C. § 1382c(a)(3). First, the claimant  
18 must be “unable to engage in any substantial gainful activity by reason of any medically  
19 determinable physical or mental impairment which can be expected to result in death or which has  
20 lasted or can be expected to last for a continuous period of not less than twelve months.” *Id.*  
21 at § 1382c(a)(3)(A). Second, the impairment must be “of such severity that [the claimant] is not  
22 only unable to do his previous work but cannot, considering his age, education, and work  
23 experience, engage in any other kind of substantial gainful work which exists in the national  
24 economy. . . [.]” *Id.* § 1382c(a)(3)(B).

25       The SSA regulations set forth a five-step sequential evaluation process for determining  
26 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4). The relevant inquiry at each step  
27 proceeds as follows:

28           1. Is claimant presently working in a substantially gainful activity? If so, then the claimant is

1 not disabled within the meaning of the Social Security Act. If not, proceed to step two.

2 See 20 C.F.R. §§ 404.1520(b), 416.920(b).

3 2. Is the claimant's impairment severe? If so, proceed to step three. If not, then the claimant  
4 is not disabled. See 20 C.F.R. §§ 404.1520(c), 416.920(c).

5 3. Does the impairment "meet or equal" one of a list of specific impairments described in 20  
6 C.F.R. Part 220, Appendix 1? If so, then the claimant is disabled. If not, proceed to step  
7 four. See 20 C.F.R. §§ 404.1520(d), 416.920(d).

8 4. Is the claimant able to do any work that he or she has done in the past? If so, then the  
9 claimant is not disabled. If not, proceed to step five. See 20 C.F.R. §§ 404.1520(e),  
10 416.920(e).

11 5. Is the claimant able to do any other work? If so, then the claimant is not disabled. If not,  
12 then the claimant is disabled. See 20 C.F.R. §§ 404.1520(f), 416.920(f).

13 *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001). The claimant has the burden of  
14 proof at steps one through four and the Commissioner has the burden of proof at step five. *Tackett*  
15 v. *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At every step of the inquiry, the Commissioner has  
16 an affirmative duty to assist the claimant in developing the record. *Id.* at 1098 n.3.

### 17 III. DISCUSSION

18 Chagas seeks summary judgment in his favor, primarily arguing that: (1) the AC erred in  
19 finding that Chagas did not rebut the presumption of continuing non-disability; (2) the AC  
20 improperly rejected Dr. Bell's and Dr. Levy's medical opinions; and (3) the AC erred in finding  
21 no severe impairment. ECF 18 at 16-24. Chagas argues that the AC's errors are grounds for  
22 reversal of its denial of benefits and entitle him to a remand for an immediate award of benefits.  
23 *Id.* at 26-27. The Commissioner cross-moves for summary judgment, arguing that the AC  
24 reasonably found that Chagas did not have a severe impairment and properly considered the  
25 medical opinions. ECF 24 at 8-18. The Commissioner additionally argues that if the Court finds  
26 reversible error, remand for further proceedings, rather than for an immediate award of benefits, is  
27 the proper remedy. *Id.* at 18-20.

28 Because it could be dispositive, the Court begins by analyzing the presumption of non-

1 continuing disability.

2           **A. Presumption of Continuing Non-Disability**

3           The AC found that the January 23, 2012 ALJ decision that Chagas did not meet the  
4           disability standard prior to October 4, 2011 precludes a finding of disability here. AR 8. The AC  
5           is wrong. Chagas submitted new and material evidence regarding a different type of claim and  
6           was unrepresented at the earlier disability hearing, rebutting the presumption of continuing non-  
7           disability.

8           The presumption of continuing non-disability is a doctrine developed by the Ninth Circuit  
9           and adopted by the SSA that applies the principle of res judicata to an ALJ's determination that a  
10          claimant is not disabled. *See Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988). “[A] final  
11          decision by an ALJ that a claimant is not disabled gives rise to a presumption that the claimant  
12          continues to be not disabled after the period adjudicated . . . [.]” Acquiescence Ruling 97-4(9).  
13          This presumption then applies when adjudicating a subsequent disability claim. *See id.*

14          The presumption is rebuttable. “A claimant may rebut the presumption by showing a  
15          ‘changed circumstance’ affecting the issue of disability with respect to the unadjudicated period.”  
16          *Id.* A changed circumstance includes a change in the claimant’s age category, an increase in the  
17          severity of the claimant’s impairment, or a new allegation regarding the existence of an  
18          impairment not previously considered. *See id.; see also Taylor v. Heckler*, 765 F.2d 872, 875 (9th  
19          Cir. 1985) (requiring “changed circumstances” to overcome a presumption of continuing non-  
20          disability). “[W]here the claimant rebuts the presumption by proving a ‘changed circumstance,’  
21          principles of res judicata require that certain findings contained in the final decision by the ALJ on  
22          the prior claim be given some res judicata consideration in determining whether the claimant is  
23          disabled.” Acquiescence Ruling 97-4(9). If the prior ALJ decision includes “findings of the  
24          claimant’s residual functional capacity, education, and work experience, [the current ALJ] may  
25          not make different findings in adjudicating the subsequent disability claim unless there is new and  
26          material evidence relating to the claimant’s residual functional capacity, education, or work  
27          experience.” *Id.*

28          Chagas contends that he presented new and material evidence because he seeks different

1 benefits – child’s benefits as opposed to disability benefits based on his work record – and  
 2 accordingly submitted 246 pages of Kaiser medical records. ECF 18 at 24.<sup>6</sup> The AC did not  
 3 explain why these records do not rebut the presumption of disability. Indeed, “the Commissioner  
 4 may not apply res judicata where the claimant raises a new issue . . . [.]” *Lester v. Chater*, 81 F.3d  
 5 821, 827-28 (9th Cir. 1995) (citation omitted); *see Gregory v. Bowen*, 844 F.2d 664, 666 (9th Cir.  
 6 1988). Moreover, res judicata is not to be applied “where the claimant was unrepresented by  
 7 counsel at the time of the prior claim.” *Id.* Chagas raises a new claim for child’s disability and  
 8 was unrepresented at the prior hearing. Thus, it was legal error for the AC to apply the continued  
 9 presumption of non-disability.

#### 10           **B.       The AC Erred in Rejecting the Medical Opinions of Certain Doctors**

11           Chagas also challenges the AC’s findings regarding the persuasiveness of the medical  
 12 opinions in the record. Specifically, Chagas challenges the AC’s persuasiveness determinations  
 13 regarding two doctors: (1) non-examining testifying medical expert Dr. Bell and (2) treating  
 14 psychiatrist Dr. Levy. ECF 18 at 20-22. “Although the [2017] regulations eliminate the  
 15 ‘physician hierarchy,’ deference to specific medical opinions, and assigning ‘weight’ to a medical  
 16 opinion, the ALJ [and AC] must still ‘articulate how [they] considered the medical opinions’ and  
 17 ‘how persuasive [they] find all of the medical opinions.’ ” *V.W. v. Comm’r of Soc. Sec.*, 2020 WL  
 18 1505716, at \*14 (N.D. Cal. Mar. 30, 2020) (internal quotations and citation omitted).<sup>7</sup> “Even  
 19 under the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as  
 20 unsupported or inconsistent without providing an explanation supported by substantial evidence.”  
 21 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Rather, “[t]he agency must ‘articulate . . .  
 22 how persuasive’ it finds ‘all of the medical opinions’ from each doctor or other source, and  
 23 ‘explain how [it] considered the supportability and consistency factors’ in reaching these

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 25           <sup>6</sup> The Commissioner fails to respond to this argument in opposing and cross-moving for summary  
 judgment. *See* ECF 24.

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 27           <sup>7</sup> “For claims filed before March 27, 2017, [t]he medical opinion of a claimant’s treating physician  
 28 [wa]s given controlling weight so long as it [wa]s well-supported by medically acceptable clinical  
 and laboratory diagnostic techniques and [wa]s not inconsistent with the other substantial evidence  
 in [the claimant’s] case record.” *V.W.*, 2020 WL 1505716, at \*13 (internal quotations and  
 citations omitted).

1 findings.” *Id.* (quoting 20 C.F.R. §§ 404.1520c(b), (b)(2)). “Supportability means the extent to  
2 which a medical source supports the medical opinion by explaining the relevant . . . objective  
3 medical evidence.” *Id.* at 791-92 (internal quotations and citation omitted); *see also* 20 C.F.R. §  
4 404.1520c(c)(1) (“The more relevant the objective medical evidence and supporting explanations  
5 presented by a medical source are to support his or her medical opinion(s) . . . , the more  
6 persuasive the medical opinions . . . will be”). “Consistency means the extent to which a medical  
7 opinion is ‘consistent . . . with the evidence from other medical sources and nonmedical sources in  
8 the claim.’ ” *Woods*, 32 F.4th at 792; *see also* 20 C.F.R. §§ 404.1520c(c)(2) (“The more  
9 consistent a medical opinion(s) . . . is with the evidence from other medical sources and  
10 nonmedical sources in the claim, the more persuasive the medical opinion(s) . . . will be”). When  
11 rejecting a medical opinion as unsupported or inconsistent, the AC is required to “provid[e] an  
12 explanation supported by substantial evidence.” *Woods*, 32 F.4th at 792. The Court addresses the  
13 challenged findings about Dr. Bell and Dr. Levy’s medical opinions.

14       **1.       Dr. Bell**

15       Dr. Bell testified at the hearing that the medical records from Kaiser show that Chagas has  
16 been in and out of treatment for more than 15 years and still has not gotten his condition entirely  
17 under control. AR 51. He explained that the records show that doctors tried various medications  
18 but Chagas “still has active symptoms that recur in spite of being on antidepressants, mood  
19 stabilizers, and anti-anxiety medication. He continues to have difficulty.” AR 52. Dr. Bell  
20 opined that based on the records noting worthlessness, sleep disturbance, appetite disturbance,  
21 suicidal thoughts, depressed mood, mania, not needing any sleep, racing thoughts, increased  
22 energy, pressured speech, flight of ideas, and distractibility, Chagas had marked limitation in  
23 concentration. AR 48-50. Dr. Bell also opined that Chagas had moderate impairment in adapting  
24 or managing himself because he was somewhat dependent on his mother, lived at home, and had  
25 not held a job for any period of time. AR 50. Based on Chagas starting treatment for depression  
26 at 15 years old, medical records from 2007 and later, and a prescription for Depakote to treat  
27 bipolar disorder starting in 2005, Dr. Bell found it reasonable to infer the severity of Chagas’  
28 impairment in November of 2004. AR 54-59.

1       The AC found Dr. Bell's opinion unsupported because he drew an inference about the  
2 severity Chagas' bipolar disorder from treatment records two years later. AR 7. Further, the AC  
3 concluded that Dr. Bell's opinion is inconsistent with evidence that Chagas did not seek treatment  
4 for the two-year period after turning 22 years old. AR 7. Chagas contends that the AC erred by  
5 improperly rejecting Dr. Bell's medical opinion because SSR 18-1p contemplates using a medical  
6 expert to infer onset prior to the date of the earliest recorded medical examination and the AC did  
7 not consider the numerous reasons why Chagas did not have office visits between May 2005 and  
8 April 2007. ECF 18 at 19-21.

9       The Court finds that the AC erred in the evaluation of Dr. Bell's assessment of Chagas'  
10 limitations. The AC does not provide substantial evidence to support its supportability and  
11 consistency conclusions. *See Biestek*, 587 U.S. at 103 (defining "substantial evidence" as  
12 evidence that "a reasonable mind might accept as adequate to support a conclusion") (citation  
13 omitted). The AC's conclusion that Dr. Bell's opinion is unsupported because it relies on records  
14 from two years later is belied by Dr. Bell's testimony. Dr. Bell explains that his inference about  
15 the severity of Chagas' impairment in November of 2004 is also based in part on his prescription  
16 for Depakote in May 2005, only six months later, and Chagas being treated for depression as a  
17 teenager. AR 58-59. Thus, objective medical evidence supports Dr. Bell's medical opinion. *See*  
18 *Woods*, 32 F.4th at 791-92. In addition, there is no apparent inconsistency between Dr. Bell's  
19 opinion and the record merely because Chagas did not see a psychiatrist between May 2005 and  
20 April 2007. Dr. Bell assessed limitations in various areas based on over a decade of medical  
21 records. By focusing only on the two-year period, the AC failed to analyze the consistency of Dr.  
22 Bell's medical opinion "with the record as a whole." *See Orn v. Astrue*, 495 F.3d 625, 631 (9th  
23 Cir. 2007). In considering the evidence in its entirety, which it must, *Rounds*, 807 F.3d at 1002,  
24 the AC's error in failing to provide substantial evidence for his conclusions that Dr. Bell's  
25 opinions were inconsistent and unsupported warrants remand.

26                   **2.      Dr. Levy**

27       Dr. Levy was Chagas' attending psychiatrist in 2010 and 2011. AR 343, 373, 484. In  
28 October of 2011, he wrote that Chagas was diagnosed with bipolar disorder over a decade earlier

1 and had since been treated regularly at the clinic. AR 484. Dr. Bell explained that it has been  
2 “difficult to stabilize [Chagas] on meds because of the severity of his disorder and a spate of side  
3 effects.” AR 484. He added that despite being on 200 mg of Lamictal daily, which was  
4 “somewhat helpful,” he was still unable to concentrate. AR 484. Finally, Dr. Levy opined that  
5 “[b]ecause of the severity of [Chagas’] mood disorder, it is highly unlikely that he will ever be  
6 able to join the work force.” AR 484.

7 The AC concluded that Dr. Levy’s opinion was “neither valuable nor persuasive” because  
8 a statement about the claimant’s ability to work “is an issue reserved for the Commissioner.” AR  
9 7 (citing 20 C.F.R. § 404.1520b(c)). Chagas does not contest the AC’s conclusion about Dr.  
10 Levy’s opinion regarding whether Chagas was able to work. Chagas argues that the AC erred in  
11 finding Dr. Levy’s opinion unpersuasive because the AC failed to explain why the other aspects of  
12 his opinion were unsupported or inconsistent – that Chagas’ disorder is difficult to control with  
13 medications, the severity of the disorder, and that despite medication, Chagas is still unable to  
14 concentrate. ECF 18 at 22. The Commissioner responds that Dr. Levy’s remaining statements  
15 were unpersuasive because he makes “general, non-specific references to the severity of Plaintiff’s  
16 disorder” and statements made in 2011 are not probative of Chagas’ functioning in November  
17 2004. ECF 24 at 15.

18 The conclusion that an individual is unable to work is “reserved to the Commissioner.” 20  
19 C.F.R. § 404.1520b(3)(i). Accordingly, the AC did not err in concluding that Dr. Levy’s  
20 statement about Chagas’ ability to work was not valuable or persuasive. However, the Court  
21 agrees with Chagas that it was legal error for the AC to not articulate why the remaining  
22 statements were or were not persuasive. The AC cannot reject a doctor’s opinion as unsupported  
23 or inconsistent without providing an explanation supported by substantial evidence. The agency  
24 must “articulate . . . how persuasive” it finds “all of the medical opinions” from each doctor or  
25 other source, 20 C.F.R. § 404.1520c(b), and “explain how [it] considered the supportability and  
26 consistency factors” in reaching these findings, *id.* § 404.1520c(b)(2). Because the AC failed to  
27 articulate any such reasoning, it erred in rejecting Dr. Levy’s opinion as unpersuasive and  
28 invaluable. Further, the Court may not substitute its own judgment for that of the AC. *Ahearn v.*

1     *Saul*, 988 F.3d 1111, 1115 (9th Cir. 2021). It therefore declines the Commissioner’s invitation to  
2 speculate as to why the AC found Dr. Levy’s remaining opinions unpersuasive. *See Brown-*  
3 *Hunter*, 806 F.3d at 492 (holding that the Court is “constrained to review the reasons the ALJ  
4 asserts”) (citation omitted). The Court therefore remands for proper consideration of Dr. Levy’s  
5 medical opinion.

6                   **C.       The AC Erred in Finding No Severe Impairment.**

7                  Finally, Chagas challenges the AC’s finding at the second step of the sequential evaluation  
8 regarding the severity of his impairments. Under the second step, an impairment is “not severe” if  
9 it does not “significantly limit” the ability to conduct “basic work activities.” 20  
10 C.F.R. § 404.1522(a). In practice, the second step of the five-step analysis “is merely a threshold  
11 determination meant to screen out weak claims.” *Buck v. Berryhill*, 869 F.3d 1040, 1048 (9th Cir.  
12 2017); *see also Smolen*, 80 F.3d at 1290 (holding that “the step-two inquiry is a de minimis  
13 screening device to dispose of groundless claims”). Therefore, a conclusion that a claimant does  
14 not suffer from a medically severe impairment must be “clearly established by medical evidence.”  
15 *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (citation omitted).

16                  Here, the AC concluded that Chagas suffered from bipolar disorder prior to November 20,  
17 2004. AR 6. However, it found Chagas’ impairment to be non-severe because of the gap in  
18 treatment between May 2005 and April 2007. AR 6. The medical records do not clearly establish  
19 that Chagas’ impairment was not severe. *See Webb*, 433 F.3d at 687.

20                  Chagas did not seek in-office treatment from April 2005 to May 2007. AR 382. However,  
21 during that time Dr. Russell continued to prescribe him Depakote – a drug used to treat bipolar  
22 disorder. AR 310-11, 321, 336, 382-384, 478. When Dr. Russell treated Chagas on April 23,  
23 2007, he noted that although Chagas had a “past history of settling down with [a] low dose of  
24 Depakote” his “meds were not helping,” he was having scattered thinking, and he believed “he has  
25 been misdiagnosed.” AR 382. Dr. Russell also noted that Chagas “does not follow up very well.”  
26 AR 382. He prescribed Chagas with a different mood stabilizer, Lamotrigine, as well as an  
27 antipsychotic, Abilify. AR 310-11, 343, 338-39.

28                  Medical treatment notes show that Chagas suffered from a slate of symptoms such as

1 chronic focus and memory issues, forgetting to eat, not being able to sleep, mania, and chronic  
2 depression. AR 312, 315, 320-21, 325-26, 328, 343. Dr. Levy wrote that in the decade since  
3 Chagas had been diagnosed with bipolar disorder, it “has been difficult to stabilize [Chagas] on  
4 meds because of the severity of his disorder and a spate of side effects.” AR 484; *see also* AR  
5 330. Indeed, Chagas’ psychiatrists repeatedly attempted to adjust the dosages of the various  
6 medications they prescribed him; numerous medical treatment notes indicate the side effects he  
7 suffered from these various medications, including being unable to sleep, eat, or attend school, and  
8 feeling like he was “losing his mind.” *See* AR 315, 338-39, 343. Treatment notes also describe  
9 Chagas as “mildly manic due to stress.” AR 330.

10 In concluding that Chagas’ bipolar disorder was not severe, the AC determined that the gap  
11 in treatment between May 2005 and April 2007 “appears to establish that the claimant’s bipolar  
12 disorder was not so severe as to require any ongoing treatment.” AR 6. The AC therefore  
13 concluded that the medical records did not establish any limitations in Chagas’ ability to  
14 understand, remember or apply information, interact with others, concentrate, persist or maintain  
15 pace, and adapt or manage himself prior to November 20, 2004. AR 6.

16 The Court finds the AC’s conclusion unsupported by substantial evidence. The AC’s  
17 determination does not appear to take into account Chagas’ documented inability to concentrate,  
18 sleep, attend school, or work; his symptoms such as mania, anxiety, depression, and forgetfulness;  
19 and his inability to be stabilized on medication. Indeed, even where the “medical record paints an  
20 incomplete picture of [the claimant’s] overall health,” it need only evidence “problems sufficient  
21 to pass the de minimis threshold of step two.” *Webb*, 433 F.3d at 687 (finding that the AC erred in  
22 finding that claimant lacked a medically severe impairment when medical evidence demonstrated  
23 that he suffered from back, knee, and hip pain, hypertension, visual disturbances, diverticulitis,  
24 lack of sleep, difficulty performing tasks, and a lack of employment).

25 Moreover, in concluding that there was insufficient evidence of the severity of Chagas’  
26 impairment prior to November 20, 2004, the AC failed to fully develop the record. “In Social  
27 Security cases the ALJ has a special duty to fully and fairly develop the record and to assure that  
28 the claimant’s interests are considered.” *Smolen*, 80 F.3d at 1288 (quoting *Brown v. Heckler*, 713

1 F.3d 441, 442 (9th Cir. 1983)). This duty arises when the evidence is ambiguous or inadequate,  
2 and exists even when the claimant is represented by counsel. *Id.*; *see Webb*, 433 F.3d at 687 (the  
3 “duty to supplement a claimant’s record is triggered by ambiguous evidence [or] the [AC’s] own  
4 finding that the record is inadequate . . . [.]”). The AC’s duty to develop the record fully is “also  
5 heightened where the claimant may be mentally ill and thus unable to protect [his] own interests.”  
6 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). This duty may be discharged in  
7 several ways, including “subpoenaing the claimant’s physicians, submitting questions to the  
8 claimant’s physicians, continuing the hearing, or keeping the record open after the hearing to  
9 allow supplementation of the record.” *Id.*; *see also* 20 CFR § 404.1520b(b)(2) (where there is  
10 insufficient evidence to determine disability, the commissioner may recontact medical sources,  
11 request additional existing evidence, ask the claimant to undergo a consultive examination, or ask  
12 the claimant or others for more information).

13 Here, the minimal medical evidence of Chagas’ condition between 2005 and 2007  
14 triggered the AC’s duty to develop the record. *See Webb*, 433 F.3d at 687. The AC itself  
15 concluded that there was “insufficient objective evidence” to infer the severity of Chagas’  
16 impairment prior to November 20, 2004. AR 6. Thus, the AC’s duty to “conduct an appropriate  
17 inquiry” was also triggered by the AC’s “own finding that the record is inadequate” to properly  
18 evaluate the evidence. *See Tonapetyan*, 242 F.3d at 1150 (citations omitted). However, the AC  
19 did not question Dr. Bell further, did not submit questions to his treating psychiatrists, and refused  
20 to let Chagas or his mother testify about the severity of his medically determined disability,  
21 despite noting that statements from treating physicians indicate a history of bipolar disorder and  
22 treatment beginning in 1997 but that electronic records only go back to 2006. AR 6.<sup>8</sup>

23 Therefore, the AC erred in failing to adequately develop the record, and the AC’s  
24

25 \_\_\_\_\_  
26 <sup>8</sup> The AC stated that it provided Chagas with an opportunity to submit additional evidence prior to  
27 its ruling but Chagas did not submit additional evidence. AR 9. However, the AC did not  
28 specifically request that Chagas submit further information or indicate that it found certain  
evidence to be insufficient. *See Tonapetyan*, 242 F.3d at 1150. Indeed, the AC’s final  
determination indicated that “further testimony from the claimant and his mother about treatment  
. . . would not be useful in assessing the severity and limiting effects, if any, of the claimant’s  
impairments . . .[.]” AR 9.

1 conclusion that Chagas' medical impairment was not severe was not supported by substantial  
2 evidence.

3 **E. Whether the Error Was Harmless**

4 If the ALJ erroneously determines that an alleged impairment is not "severe" at step two,  
5 the reviewing court must determine whether the error was harmless. *Lewis v. Astrue*, 498 F.3d  
6 909, 911 (9th Cir. 2007); *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Any failure to  
7 classify an impairment as non-severe at step two is harmless if the ALJ or AC subsequently  
8 considered the limitations posed by the impairment at a later step in the inquiry. *See McGuire v.*  
9 *Kijakazi*, 2021 WL 5861284, at \*1 (9th Cir. Dec. 7, 2021) (finding that the ALJ's error at step two  
10 was harmless since the ALJ considered the non-severe impairment later in the inquiry). The  
11 Social Security Ruling for Titles II and XVI directs that:

12 Great care should be exercised in applying the not severe impairment concept. If an  
13 adjudicator is unable to determine clearly the effect of an impairment or combination  
14 of impairments on the individual's ability to do basic work activities, the sequential  
15 evaluation process should not end with the not severe evaluation step. Rather, it  
should be continued.

16 SSR 85-28. In such circumstances, the adjudicator must evaluate the claimant's "ability to do past  
17 work, or to do other work based on the consideration of age, education, and prior work  
18 experience." *Id.*

19 Here, the AC failed to evaluate Chagas' ability to do past or other work or to continue in  
20 the sequential evaluation process. Therefore, the AC's legal error was not harmless, and remand is  
21 warranted.

22 **F. Remedy**

23 The Social Security Act permits the district court to affirm, modify, or reverse the  
24 Commissioner's decision "with or without remanding the cause for a rehearing."  
25 42 U.S.C. § 405(g); *see Garrison v. Colvin*, 759 F.3d 995, 1019 (9th Cir. 2014). "[T]he proper  
26 course, except in rare circumstances, is to remand to the agency for additional investigation or  
27 explanation." *Benecke*, 379 F.3d at 595 (citations omitted). However, under the credit-as-true  
28 rule, the Court may order an immediate award of benefits if three conditions are met: (1) "the AC

1 failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or  
2 medical opinion,” (2) there are no “outstanding issues that must be resolved before a disability  
3 determination can be made” and further administrative proceedings would serve no useful  
4 purpose, and (3) when considering the record as a whole and crediting the improperly discounted  
5 testimony as true, there is no doubt as to disability. *See Leon v. Berryhill*, 880 F.3d 1041, 1045  
6 (9th Cir. 2017). Even if all three criteria are met, the decision to remand for an award of benefits  
7 or remand for further proceedings is within the district court’s discretion. *Id.*

8 Remand for further proceedings is proper here. While Chagas argues that the record is  
9 fully developed, his own contentions in this appeal demonstrate otherwise. First, Chagas faults the  
10 AC for not allowing him or his mother to testify. ECF 18 at 18. Second, Chagas speculated about  
11 the reasons he did not seek treatment from 2005 to 2007. *Id.* at 21. Moreover, it is not clear that  
12 the ALJ or AC would be required to find Chagas disabled, even if these issues were resolved in  
13 Chagas’ favor. For these reasons, remand for further proceedings, rather than an award for  
14 immediate payment of benefits, is appropriate. *See Leon*, 880 F.3d at 1047-48 (remanding for  
15 further proceedings where the claimant’s testimony about fatigue was not fully developed and  
16 there were serious doubts as to whether the claimant was in fact disabled); *see also Dominguez v.*  
17 *Colvin*, 808 F.3d 403, 408-10 (9th Cir. 2015) (finding remand appropriate so the ALJ could  
18 determine how alleged impairments affected the claimant’s residual functional capacity and  
19 resolve inconsistencies between physician’s opinions and treatment notes); *Treichler v. Comm’r,*  
20 *Soc. Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014) (remanding where the inconsistencies  
21 between the claimant’s testimony and the medical evidence in the record raised crucial questions  
22 as to the extent of the claimant’s impairments).

23 **IV. CONCLUSION**

24 For the reasons set forth above, the Court **GRANTS** Chagas’ motion for summary

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1 judgment, **DENIES** the Commissioner's cross-motion, and **REMANDS** this case for further  
2 administrative proceedings consistent with this Order.

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4 **IT IS SO ORDERED.**

5 Dated: September 26, 2024

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ARACELI MARTÍNEZ-OLGUÍN  
United States District Judge